

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CITY OF NEW YORK,

Plaintiff,

– against –

BERETTA U.S.A. CORP., et al.,

Defendants.

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JAQUIONE JOHNSON,

Plaintiff,

– against –

BRYCO ARMS, et al.,

Defendants.

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JOAN TRUMAN SMITH,

Plaintiff,

– against –

BRYCO ARMS, et al.,

Defendants.

MEMORANDUM
JUDGMENT & ORDER
(ATF Data)
00 CV 3641 (JBW)

03 CV 2582 (JBW)

02 CV 3029 (JBW)

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Jack B. Weinstein, Senior District Judge:

In connection with NAACP v. Acusport, Inc., 271 F.Supp.2d 435 (E.D.N.Y. 2003) (“NAACP”), the court issued an order restricting the availability of trace data (showing transfer of hand guns that law enforcement was interested in from manufacturers to ultimate licenced retailers) collected by the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”). See NAACP v. Acusport Corp., 210 F.R.D. 268 app. B & C (2002). It was to be used only in pretrial and trial of the NAACP case.

Four entities were involved in the negotiations leading to limited release of that data by the ATF: the plaintiff, the defendants, the ATF and the Special Master appointed by the court. The ATF now objects to the breaking of the “secrecy deal” it made that was approved and embodied in this court’s order.

In effect the court agreed to enforce the arrangement. It had full knowledge of the reluctance of the ATF to release its trace data without a secrecy order. In approving the agreement the court did not append its usual caveat, “This secrecy of sealing is subject to modification in the public interest.” No substantial reason exists for the court’s withdrawing its assurances of secrecy in the NAACP case absent consent of the ATF.

The motion to open the NAACP data for use in other gun cases is denied.

This ruling does not control the issue of what, if any, ATF data should be available in the instant or any other case. That issue is respectfully referred to the magistrate judge for prompt decision as part

of discovery control. Depending upon the magistrate judge's and the court's ruling in these captioned cases now pending, the ATF may wish to reconsider its view in the NAACP case. It may save the parties and ATF considerable time and expense if the analysis of experts based on NAACP data would not need to be gathered anew for the current cases.

This ruling does not decide questions of admissibility of evidence in the instant or any other case. Those questions are reserved to the court.

SO ORDERED.

Jack B. Weinstein
Senior United States District Judge

Dated: Brooklyn, N.Y.
April 13, 2004